

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 08-00026-04-CR-W-FJG
	)	
CHRISTOPHER L. ELDER,	)	
TROY SOLOMON, and	)	
DELMON L. JOHNSON,	)	
	)	
Defendants.	)	

**DEFENDANTS' JOINT MOTION TO CONTINUE THE TRIAL  
SETTING TO THE APRIL 2009 DOCKET WITH SUGGESTIONS  
IN SUPPORT**

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COME NOW defendants and move the Court to continue the trial of this case until the April 2009 regular trial docket or some date thereafter convenient to the Court. As grounds there for defendants state:

1. Doctor Elder, Mr. Solomon and Mr. Johnson all face serious felony charges that could result in substantial incarceration upon conviction. Doctor Elder also faces the reality of loss of his medical license if convicted. Mr. Johnson and Mr. Solomon will suffer loss of possible business and pharmacy licenses if convicted. As of this filing, defense counsel have been provided almost 18,000 pages of witness

statements, medical and pharmacy records, shipping documents, state hearing transcripts, grand jury transcripts, telephone record print outs, and other information which is and continues to be under review and study. The case is by any criteria exceedingly complex.<sup>1</sup>

2. Counsel for defendant Elder has discussed a continuance with AUSA Rhodes and he is not opposed to this continuance and also would prefer the April docket because of a trial setting he has in March. Counsel for Solomon and Johnson, Mr. Anthony Bannwart, has also been consulted and he too favors an April setting and has instructed counsel for Elder to file this as a joint motion.

3. Per this court's order, defendant Elder provided the government and co-defendant counsel with fairly voluminous reciprocal discovery of approximately 1500 or more pages, following which the government provided all defendants with a sizeable amount of additional follow up investigative materials reflecting new and expanded investigation conducted during the month of November 2008. All defense counsel received this latter government information in mid to late November in a timely fashion and have since been engaged in the analysis of those materials which include witness statements and a sizeable amount of documentary evidence. This has

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<sup>1</sup> This figure does not include the voluminous amount of information contained on CDs in electronic format recently turned over which consists of mirror images of the computers seized in this case. This information consists of pharmacy records, shipping records, emails and other things normally found on a business computer system.

necessitated in many instances a re-review and analysis of previously provided 18,000 pages of discovery.

4. This past week the government served notice that it intends to call six expert witnesses. Defense counsel were aware of the names of two or three of these persons but has only now been apprised of the nature and substance of their expected testimony. Defendant Elder and possibly co-defendant counsel will likely file a request for a *Daubert* hearing on one or two of these designated experts; however, additional time is needed by all counsel to assess their potential testimony and proffered evidence and firm up these tactical decisions. This too has prompted further review and study of the overall package of discovery provided by the government. Also, all defendants are now considering the endorsement of yet additional experts of their own which they are in the process of seeking out and contacting. This too will require additional time and effort by all counsel.

5. Defendants learned yesterday, December 11, 2008, that defendant Martin is scheduled to change her plea from not guilty to guilty on December 18, 2008. Counsel for Elder spoke briefly with counsel for Martin and has concluded that Martin has been or will be providing yet additional information to the government that is perhaps different from or certainly an expansion of information previously provided in her prior proffer. This will directly impact on defendants Solomon and Johnson and to a lesser degree on defendant Elder. All defendants need additional

time to review this new information provided or to be provided by Martin and conduct follow up investigation of their own. This too will require additional time and effort.

6. The tasks required by all counsel are exacerbated to some degree by the fact that this case is indicted in Missouri while the defendants all reside in Texas with witnesses located in both jurisdictions. This presents logistical problems and issues that are not normally present when all defendants and witnesses are located in the same judicial district.

7. Counsel submits that defendants are entitled to a continuance under the provisions of Title 18, United States Code, Section 3161(h)(8)(B), in that: a) trial on the current docket would result in a miscarriage of justice; b) the case is significant in terms of the outcome for the reasons stated in the above paragraphs; c) it is unreasonable to expect counsels and the defendants to be ready for trial by the currently scheduled trial date; and, d) failure to grant the continuance would likely prevent undersigned counsel from being able to adequately prepare and present the defense case for their respective clients.

8. This request is not made with intent to gain tactical advantage over the prosecution and counsel are unaware of any prejudice that might result to the prosecution if this request is granted.

WHEREFORE, defendants move the Court to strike this matter from its present setting and reschedule the matter for the April 2009 regular trial docket.

Respectfully submitted,

/s/

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Delmon Johnson

#### CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been caused to be served on the Assistant United States Attorney for Western District of Missouri and other ECF listed counsel through use of the Electronic Court Document Filing System on Friday, December 12, 2008.

/s/

JOHN R. OSGOOD

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